

No. 77-1624

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE,
PETITIONER**

v.

SEACOAST ANTI-POLLUTION LEAGUE, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT**

**SUPPLEMENTAL BRIEF FOR THE
ADMINISTRATOR OF THE ENVIRONMENTAL
PROTECTION AGENCY IN OPPOSITION**

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.**

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Pursuant to Rule 24(5) of this Court, this supplemental brief is filed to advise the Court of events occurring after the filing of our brief in opposition on July 6, 1978.

Petitioner seeks review of asserted errors in the decision of the court of appeals remanding the present case to the Administrator for supplemental administrative hearings. The Administrator conducted those supplemental hearings, in compliance with the mandate of the court of appeals, on June 26 through June 30 and July 5 through July 6, 1978. Both petitioner and respondents participated in the supplemental hearings. On August 4, 1978, the Administrator issued his decision based on the evidence

adduced in the supplemental hearings. In that decision he reaffirmed his original approval of the cooling system that petitioner seeks to employ at the nuclear generating station in Seabrook, New Hampshire.¹

On August 10, 1978, respondents Seacoast Anti-Pollution League and Audubon Society of New Hampshire instituted a new proceeding for review in the court of appeals, captioned *Seacoast Anti-Pollution League, et al. v. Costle* (C.A. 1, No. 78-1339), challenging the Administrator's supplemental decision. Petitioner herein has sought leave to intervene in that new proceeding.

The Administrator's decision, approving petitioner's proposed cooling system under Section 316 of the Federal Water Pollution Control Act, as added, 86 Stat. 876, 33 U.S.C. (Supp. V) 1326, is now subject to fresh review in the court of appeals, based on all of the evidence adduced before the Administrator including the evidence presented in the supplemental hearings. Should the court of appeals once again reverse the Administrator's decision, petitioner could then petition for certiorari based on the complete hearing record. Should the court of appeals affirm the Administrator's decision, petitioner will have no need to seek further review in this Court. In our view, this is an additional ground for denying the petition for certiorari in the present posture of this case.

¹The Administrator's supplemental decision reaffirming his prior decision in petitioner's favor is captioned *In the Matter of Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2); National Pollution Discharge Elimination System, Permit Application No. NH 0020338* (EPA Case No. 76-7).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

AUGUST 1978.